

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA :
v. : Hon. John Michael Vazquez
FRANK MICHAEL MONTE : Crim. No. 19-cr-821-JMV

[DISCOVERY ORDER]

This matter comes before the Court on an application of the United States of America, by Craig Carpenito, United States Attorney for the District of New Jersey (Andrew M. Trombly, Assistant United States Attorney, appearing) for an order providing for the filter review of the personal mobile device seized from the defendant, Frank Michael Monte, at his arrest on October 31, 2019, and bearing serial number 803CYEA327740 and IMEI number 355574-08-327740-5 (the “Device”). As explained in the Government’s letter to this Court dated August 3, 2020, the Government obtained a search warrant for the Device issued by the Honorable Lois Bloom, U.S. Magistrate Judge of the Eastern District of New York, on February 14, 2020. As further explained in the Government’s August 3, 2020 letter, Mr. Monte was already represented by counsel with the Federal Public Defender’s Office (the “FPD”) in connection with this matter at the time he was arrested. The Government therefore believes that potentially privileged communications between Mr. Monte and FPD personnel might be stored on the Device.

To isolate any such privileged records, and any other privileged records stored on the Device, from review by the Assistant U.S. Attorneys and U.S. Secret Service Special Agents assigned to investigate and prosecute this matter (the “Prosecution Team”), the Government proposes the filter procedures below (the “Proposed Filter Procedures”):

PROPOSED FILTER PROCEDURES

1. The Government has assigned an Assistant U.S. Attorney (the “filter AUSA”) and U.S. Secret Service Special Agent (the “filter agent”) (collectively, the “Filter Team”) to manage the filter process.
2. The Filter Team will attempt to identify all potentially privileged and attorney work-product protected materials within the Device by conducting electronic searches for attorney names and other terms designed to screen for privilege and attorney-work product (the “Search Terms”).

3. Specifically, the Search Terms include the following:

- Saverio Viggiano
- Sam Viggiano
- Saverio_Viggiano@fd.org
- 609-649-2154 (Mr. Viggiano’s cell phone number)
- 973-368-6446 (Mr. Viggiano’s direct office number)
- 973-645-6347 (Federal Public Defender’s main phone line)
- Colleen Flanagan
- colleen_flanagan@fd.org

- 609-649-0265 (Ms. Flanagan's cell phone number)
- 973-645-6565 (Ms. Flanagan's direct office number)
- Federal Public Defender's Office
- Attorney
- Counselor
- Attorney-client
- Privileged
- Lawyer
- Esquire
- Work product
- Enclave
- Enclave court

4. As soon as practicable after the above-described screening of the Device with the Search Terms is accomplished, the Filter Team will process and isolate all records on the Device responding to the Search Teams the ("Identified Materials"). The Filter Team will not conduct further review of the Identified Materials. Furthermore, the Filter Team will ensure that the Prosecution Team will not have access to the Identified Materials.

5. The Filter Team will designate all records stored on the Device that do not hit on any of the Search Terms as "Remaining Materials." The Remaining Materials will be immediately turned over to the Prosecution Team for review.

6. If the Government subsequently determines that any of the Remaining

Materials contain information that may be privileged and/or subject to work-product protection, the Filter Team will notify Mr. Monte (or Mr. Monte's counsel of record, if he is represented by counsel at that time) as soon as practicable, take steps to remove all copies of such materials from access by the Prosecution Team, and direct the Prosecution Team to cease use of such materials.

ORDER

It is, therefore, on this 11th day of August, 2020, hereby **ORDERED** that:

- (1) The Filter Procedures proposed by the Government for the review of the Device, as set forth in paragraphs 1 through 6 above, appropriately safeguard whatever privilege exists in the records stored on the Device;
- (2) Review by the Prosecution Team of privileged or work-product protected materials in accordance with the Filter Procedures shall be considered inadvertent; and
- (3) Such inadvertent review by the Prosecution Team shall not constitute grounds for any member of the Prosecution Team to be limited or otherwise conflicted from continued participation in this matter.


HONORABLE JOHN MICHAEL VAZQUEZ
UNITED STATES DISTRICT JUDGE